

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 23, 2000 appellant, then a 37-year-old technician, filed a traumatic injury claim, (Form CA-1) alleging that on June 21, 2000, during a break, she was walking to the employing establishment credit union located next door to the building where she worked when she stepped in a hole in the pavement causing her to slip and fall on her face and left sided while in the performance of duty. She amended her Form CA-1 on June 13, 2000 to include that she broke two teeth in the fall. By decisions dated October 18, 2000 and June 28, 2001, OWCP denied appellant's claim finding that she was not in the performance of duty at the time of her June 21, 2000 incident. Appellant appealed to the Board. By a July 24, 2002 decision, the Board remanded the case for further development regarding the location of the hole and other factual aspects of her claim.⁵

By decision dated September 26, 2002, OWCP accepted appellant's claim for sprain/strain of the left foot, left hand, and the left shoulder or upper arm.⁶

On April 1, 2014 appellant filed a schedule award claim (Form CA-7).

By decision dated July 7, 2016, OWCP granted appellant a schedule award for two percent permanent impairment of the left upper extremity.

On July 15, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, asserting that the evidence of record established that appellant was entitled to a schedule award greater than the two percent previously awarded.

⁴ Docket No. 18-0446 (issued November 6, 2019); Docket No. 11-1718 (issued June 6, 2012); Docket No. 01-1895 (issued July 24, 2002).

⁵ Docket No. 01-1895 *id.*

⁶ In a letter dated November 9, 2009, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It afforded her 30 days to respond. By decision dated December 23, 2009, OWCP terminated appellant's wage-loss compensation and medical benefits, effective December 18, 2009. Appellant appealed the December 23, 2009 termination decision to the Board. By decision dated June 6, 2012, the Board affirmed the termination, finding that OWCP met its burden of proof to terminate her wage-loss compensation and medical benefits effective December 20, 2009.

By decision dated June 6, 2017, OWCP's hearing representative found that appellant had no more than two percent permanent impairment of her left upper extremity for which she previously received a schedule award.

On July 20, 2017 appellant, through counsel, requested reconsideration of the June 6, 2017 merit decision contending that *T.H.*⁷ and FECA Bulletin No. 17-06⁸ required OWCP to issue a new schedule award decision and a finding of greater impairment.

By decision dated October 17, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim.

On December 29, 2017 appellant appealed the October 17, 2017 OWCP decision to the Board. By decision dated November 6, 2019 decision,⁹ the Board set aside the October 17, 2017 decision, finding that OWCP improperly denied her request for reconsideration of the merits of her claim. The Board remanded the case for an appropriate decision on the merits of the increased schedule award claim.

By decision dated March 20, 2020, OWCP conducted a merit review, but denied modification of its prior decision finding that appellant had no more than two percent permanent impairment of her left upper extremity. On March 30, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated April 14, 2020, OWCP denied appellant's request for a hearing, finding that she was not entitled to a hearing as a matter of right because she had previously requested reconsideration of her claim. It exercised its discretion, and determined that the underlying issue could equally well be addressed by requesting reconsideration and submitting probative new evidence in support of her claim for an increased schedule award.

LEGAL PRECEDENT

Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."¹⁰ Section 10.615 of OWCP's federal regulations, implementing this section of FECA, provides that a claimant who requests a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.¹¹ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing

⁷ *T.H.*, Docket No. 14-0943 (issued November 25, 2016).

⁸ FECA Bulletin No. 17-06 (May 8, 2017).

⁹ Docket No. 18-0446 (issued November 6, 2019).

¹⁰ 5 U.S.C. § 8124(b)(1).

¹¹ 20 C.F.R. § 10.615.

as a matter of right unless the request is made within the requisite 30 days.¹² The date of filing is fixed by postmark or other carrier's date marking.¹³

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and that it must exercise this discretionary authority in deciding whether to grant a hearing.¹⁴ Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA which provided the right to a hearing,¹⁵ when the request is made after the 30-day period for requesting a hearing,¹⁶ when the request is for a second hearing on the same issue,¹⁷ and when the request is made after a reconsideration request was previously submitted.¹⁸ In these instances, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.¹⁹

ANALYSIS

The Board finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b).

Appellant's March 30, 2020 hearing request was made after she had previously requested reconsideration of OWCP's denial of her claim for an increased schedule award. The Board notes that on July 20, 2017 she requested reconsideration of OWCP's June 6, 2017 merit decision denying her claim for an additional schedule award. By decision dated October 17, 2017, OWCP denied reconsideration of the merits of appellant's schedule award claim. Consequently, the Board finds that she was not entitled to a hearing as a matter of right as she had previously requested reconsideration.²⁰

While OWCP also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, OWCP, in its April 14, 2020 decision, properly exercised its discretion by considering appellant's request and finding that the issue could be equally well

¹² T.A., Docket No. 18-0431 (issued November 7, 2018); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

¹³ 20 C.F.R. § 10.616(a).

¹⁴ T.A., *supra* note 12; *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁵ C.A., Docket No. 17-0944 (issued May 15, 2018); *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

¹⁶ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

¹⁷ *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹⁸ R.H., Docket No. 07-1658 (issued December 17, 2007); S.J., Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

¹⁹ C.A., *supra* note 15.

²⁰ *Supra* note 17.

addressed through the submission of a reconsideration request with evidence supporting her claim for an increased schedule award. The Board has held that as the only limitation on OWCP's authority is reasonableness, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.²¹ In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's request for a hearing which could be found to be an abuse of discretion.²²

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b).

²¹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

²² *C.A.*, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board